

**House File 2483 - Introduced**

HOUSE FILE 2483  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 709)

**A BILL FOR**

1 An Act relating to trusts and estates including provisions  
2 relating to state inheritance tax, uniform transfers to  
3 minors, and medical assistance claims, and including an  
4 applicability provision.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 450.4, subsection 5, Code 2009, is  
2 amended by striking the subsection and inserting in lieu  
3 thereof the following:

4 5. a. On that portion of the decedent's interest in an  
5 employer-provided or employer-sponsored retirement plan or on  
6 that portion of the decedent's individual retirement account  
7 that will be subject to federal income tax when paid to the  
8 beneficiary. This exemption shall apply regardless of the  
9 identity of the beneficiary and regardless of the number of  
10 payments to be made after the decedent's death.

11 b. For purposes of this exemption:

12 (1) An individual retirement account includes an individual  
13 retirement annuity or any other arrangement as defined in  
14 section 408 of the Internal Revenue Code.

15 (2) An *employer-provided or employer-sponsored retirement*  
16 *plan* includes a qualified retirement plan as defined in section  
17 401 of the Internal Revenue Code, a governmental or nonprofit  
18 employer's deferred compensation plan as defined in section  
19 457 of the Internal Revenue Code, and an annuity as defined in  
20 section 403 of the Internal Revenue Code.

21 Sec. 2. Section 565B.6, subsection 3, paragraph c, Code  
22 2009, is amended to read as follows:

23 c. The transfer is authorized by the court if all ~~transfers~~  
24 ~~(including transfers, including the transfer to be made and~~  
25 ~~prior transfers)~~ transfers, exceed ~~ten~~ twenty-five thousand  
26 dollars in value. Transfers by a personal representative,  
27 trustee, or conservator shall not be aggregated, but each  
28 personal representative, trustee, or conservator shall be  
29 treated separately.

30 Sec. 3. Section 633.63, subsection 1, Code 2009, is amended  
31 to read as follows:

32 1. Any natural person of full age, who is a resident of this  
33 state, is qualified to serve as a fiduciary, except any of the  
34 following:

35 a. ~~One who is under legal incompetency or is a chronic~~

1 ~~alcoholic or a spendthrift~~ A person who is incompetent.

2 *b.* Any other person whom the court determines to be  
3 unsuitable.

4 Sec. 4. Section 633.231, Code 2009, is amended to read as  
5 follows:

6 **633.231 Notice in intestate estates — medical assistance**  
7 **claims.**

8 1. Upon opening administration of an intestate estate,  
9 the administrator shall, in accordance with section 633.410,  
10 provide by ~~ordinary mail~~ electronic transmission on a form  
11 approved by the department of human services to the entity  
12 designated by the department of human services, a notice of  
13 opening administration of the estate and of the appointment  
14 of the administrator, which shall include a notice to file  
15 claims with the clerk or to provide electronic notification to  
16 the administrator that the department has no claim within the  
17 ~~later to occur of four months from the second publication of~~  
18 ~~the notice to creditors or six months from the date of mailing~~  
19 ~~of sending~~ this notice, or thereafter be forever barred.

20 2. The notice shall be in substantially the following form:

21 NOTICE OF OPENING ADMINISTRATION  
22 OF ESTATE, OF APPOINTMENT OF  
23 ADMINISTRATOR, AND NOTICE  
24 TO CREDITOR

25 In the District Court of Iowa

26 In and for ..... County.

27 In the Estate of ....., Deceased

28 Probate No. ....

29 To the Department of Human Services Who May Be Interested in  
30 the Estate of ....., Deceased, who died on  
31 or about ..... (date):

32 You are hereby notified that on the ..... day  
33 of..... (month), ..... (year), an intestate  
34 estate was opened in the above-named court and  
35 that ..... was appointed

1 administrator of the estate.

2 You are further notified that the birthdate of the deceased  
3 is ..... and the deceased's social security number  
4 is .....-.....-..... The name of the  
5 spouse is ..... The birthdate of the spouse  
6 is..... and the spouse's social security number  
7 is.....-.....-....., and that the spouse  
8 of the deceased is alive as of the date of this notice, or  
9 deceased as of ..... (date).

10 You are further notified that the deceased was/was  
11 not a disabled or a blind child of the medical assistance  
12 recipient by the name of ....., who had a  
13 birthdate of ..... and a social security number  
14 of .....-.....-....., and the medical  
15 assistance debt of that medical assistance recipient was  
16 waived pursuant to section 249A.5, subsection 2, paragraph  
17 "a", subparagraph (1), and is now collectible from this estate  
18 pursuant to section 249A.5, subsection 2, paragraph "b".

19 Notice is hereby given that if the department of human  
20 services has a claim against the estate for the deceased person  
21 or persons named in this notice, the claim shall be filed with  
22 the clerk of the above-named district court, as provided by  
23 law, duly authenticated, for allowance, ~~and unless so filed by~~  
24 ~~the later to occur of four months from the second publication~~  
25 ~~of the notice to creditors or six months from the date of the~~  
26 ~~mailing of this notice~~ within six months from the date of  
27 sending this notice and, unless otherwise allowed or paid, the  
28 claim is thereafter forever barred. If the department does not  
29 have a claim, the department shall return the notice to the  
30 executor with notification stating the department does not have  
31 a claim within six months from the date of sending this notice.

32 Dated this ..... day of .....  
33 (month),..... (year)

34 .....  
35 Administrator of estate

1 .....  
2

Address

3 .....

4 Attorney for administrator

5 .....

6 Address

7 ~~Date of second publication~~

8 ~~..... day of ..... (month),~~

9 ~~..... (year)~~

10 Sec. 5. Section 633.304A, Code 2009, is amended to read as  
11 follows:

12 **633.304A Notice of probate of will — medical assistance**  
13 **claims.**

14 1. On admission of a will to probate, the executor shall,  
15 in accordance with section 633.410, provide by ~~ordinary~~  
16 ~~mail~~ electronic transmission on a form approved by the  
17 department of human services to the entity designated by the  
18 department of human services, a notice of admission of the will  
19 to probate and of the appointment of the executor, which shall  
20 include a notice to file claims with the clerk or to provide  
21 electronic notification to the executor that the department has  
22 no claim within the later to occur of four ~~six~~ months from the  
23 ~~second publication of the notice to creditors or six months~~  
24 ~~from the date of mailing of sending~~ this notice, or thereafter  
25 be forever barred.

26 2. The notice shall be in substantially the following form:

27 NOTICE OF PROBATE OF WILL,  
28 OF APPOINTMENT OF EXECUTOR,  
29 AND NOTICE TO CREDITORS

30 In the District Court of Iowa

31 In and for ..... County.

32 In the Estate of ....., Deceased

33 Probate No. ....

34 To the Department of Human Services, Who May Be Interested in  
35 the Estate of ....., Deceased, who died on

1 or about ..... (date):

2 You are hereby notified that on the ..... day  
3 of..... (month), ..... (year), the last will  
4 and testament of ....., deceased,  
5 bearing date of the ..... day of .....  
6 (month),..... (year), was admitted to  
7 probate in the above-named court and  
8 that..... was appointed executor of  
9 the estate.

10 You are further notified that the birthdate of the deceased  
11 is ..... and the deceased's social security  
12 number is .....-.....-..... The name of  
13 the spouse is ..... The birthdate of the spouse  
14 is ..... and the spouse's social security number  
15 is .....-.....-....., and that the spouse  
16 of the deceased is alive as of the date of this notice, or  
17 deceased as of ..... (date).

18 You are further notified that the deceased was/was  
19 not a disabled or a blind child of the medical assistance  
20 recipient by the name of ....., who had a  
21 birthdate of ..... and a social security number  
22 of .....-.....-....., and the medical  
23 assistance debt of that medical assistance recipient was  
24 waived pursuant to section 249A.5, subsection 2, paragraph  
25 "a", subparagraph (1), and is now collectible from this estate  
26 pursuant to section 249A.5, subsection 2, paragraph "b".

27 Notice is hereby given that if the department of human  
28 services has a claim against the estate for the deceased person  
29 or persons named in this notice, the claim shall be filed with  
30 the clerk of the above-named district court, as provided by  
31 law, duly authenticated, for allowance, ~~and unless so filed by~~  
32 ~~the later to occur of four months from the second publication~~  
33 ~~of the notice to creditors or six months from the date of~~  
34 ~~mailing of this notice~~ within six months from the date of  
35 sending this notice and, unless otherwise allowed or paid, the

1 claim is thereafter forever barred. If the department does not  
2 have a claim, the department shall return the notice to the  
3 executor with notification that the department does not have a  
4 claim within six months from the date of sending this notice.

5 Dated this ..... day of .....  
6 (month), ..... (year)

7 .....

8 Executor of estate

9 .....

10 Address

11 .....

12 Attorney for executor

13 .....

14 Address

15 ~~Date of second publication~~

16 ~~..... day of ..... (month),~~

17 ~~..... (year)~~

18 Sec. 6. Section 633.356, subsection 1, Code 2009, is amended  
19 to read as follows:

20 1. When the gross value of the decedent's personal property  
21 that would otherwise be distributed by will or intestate  
22 succession does not exceed twenty-five thousand dollars and  
23 there is no real property or the real property passes to  
24 persons exempt from inheritance tax pursuant to section 450.9  
25 as joint tenants with right of survivorship, and if forty days  
26 have elapsed since the death of the decedent, the successor  
27 of the decedent as defined in subsection 2 may, by filing an  
28 affidavit prepared pursuant to subsection 3 or 8, and without  
29 procuring letters of appointment, do any of the following  
30 with respect to one or more particular items of such personal  
31 property:

32 a. Receive any particular item of tangible personal property  
33 ~~that is tangible personal property~~ of the decedent.

34 b. Have any ~~particular item of property that is~~ evidence  
35 of a debt, obligation, interest, right, security, or chose in

1 action belonging to the decedent transferred.

2 c. Collect the proceeds from any life insurance policy or  
3 any other item of property for which a beneficiary has not been  
4 designated.

5 Sec. 7. Section 633.410, subsection 2, Code 2009, is amended  
6 to read as follows:

7 2. Notwithstanding subsection 1, claims for debts created  
8 under section 249A.5, subsection 2, relating to the recovery of  
9 medical assistance payments shall be barred under this section  
10 unless filed with the clerk within ~~the later to occur of four~~  
11 ~~months after the date of the second publication of the notice~~  
12 ~~to creditors, or six months after service of sending notice by~~  
13 ~~ordinary mail electronic transmission, on the form prescribed~~  
14 in section 633.231 for intestate estates or on the form  
15 prescribed in section 633.304A for testate estates, to the  
16 entity designated by the department of human services to  
17 receive notice.

18 Sec. 8. Section 633A.4502, subsection 2, Code Supplement  
19 2009, is amended to read as follows:

20 2. ~~This~~ The exception created in subsection 1 of  
21 this section does not apply to any trust created prior to  
22 July 1, 2002, ~~and applies to trusts created on or after~~  
23 ~~July 1, 2002, unless the settlor has specifically waived the~~  
24 ~~requirements of this section in the trust instrument. Waiver~~  
25 ~~of this section shall not bar any beneficiary's common law~~  
26 ~~right to an accounting, and shall not provide any immunity to a~~  
27 ~~trustee, acting under the terms of the trust, for liability to~~  
28 ~~any beneficiary who discovers facts giving rise to a cause of~~  
29 ~~action against the trustee.~~

30 Sec. 9. Section 633A.4604, Code 2009, is amended to read as  
31 follows:

32 **633A.4604 Certification of trust.**

33 1. A trustee may present a certification of trust to any  
34 person in lieu of providing a copy of the trust instrument to  
35 establish the ~~existence or terms of the trust~~ trust's existence

1 or terms or the trustee's authority.

2 2. The certification must contain a statement that the trust  
3 has not been revoked, modified, or amended in any manner which  
4 would cause the representations contained in the certification  
5 of trust to be incorrect and must contain a statement that it  
6 is being signed by all of the currently acting trustees of the  
7 trust and is sworn and subscribed to under penalty of perjury  
8 before a notary public.

9 3. A certification of trust need not contain the dispositive  
10 provisions of the trust which set forth the distribution of the  
11 trust estate.

12 4. A person may require that the trustee offering the  
13 certification of trust provide proof of the trustee's identity  
14 and copies of those excerpts from the original trust instrument  
15 and amendments to the original trust instrument which designate  
16 the trustee and confer upon the trustee the power to act in the  
17 pending transaction.

18 5. A person who acts in reliance upon a certification  
19 of trust ~~without~~ after taking reasonable steps to verify  
20 the identity of the trustee and without knowledge that the  
21 representations contained in the certification are incorrect  
22 is not liable to any person for so acting and may assume  
23 without inquiry the existence of the facts contained in the  
24 certification. The period of time to verify the identity of  
25 the trustee shall not exceed ten business days from the date  
26 the person received the certification of trust. Knowledge  
27 shall not be inferred solely from the fact that a copy of all or  
28 part of the trust instrument is held by the person relying upon  
29 the trust certification. A transaction, and a lien created  
30 by a transaction, entered into by the trustee and a person  
31 acting in reliance upon a certification of trust is enforceable  
32 against the trust assets.

33 6. A person making a demand for the trust instrument in  
34 addition to a certification of trust or excerpts shall be  
35 liable for damages, including attorney fees, incurred as a

1 result of the refusal to accept the certification of trust  
2 or excerpts in lieu of the trust instrument if the court  
3 determines that the person acted unreasonably in requesting the  
4 trust instrument.

5 7. a. If a trustee has provided a certification of  
6 trust and a person refuses to pay, deliver, or transfer any  
7 property owed to or owned by the trust within a reasonable  
8 time thereafter, the trustee may bring an action under this  
9 subsection and the court may award any or all of the following  
10 to the trustee:

11 (1) Any damages sustained by the trust.

12 (2) The costs of the action.

13 (3) A penalty in an amount of not less than five hundred  
14 dollars and not more than ten thousand dollars.

15 (4) Reasonable attorney fees, based on the value of the time  
16 reasonably expended by the attorney and not on the amount of  
17 the recovery on behalf of the trustee.

18 b. An action shall not be brought under this subsection more  
19 than one year after the date of the occurrence of the alleged  
20 violation.

21 ~~7.~~ 8. This section does not limit the rights of  
22 beneficiaries to obtain copies of the trust instrument or  
23 rights of others to obtain copies in a proceeding concerning  
24 the trust.

25 Sec. 10. Section 633A.6101, Code 2009, is amended to read  
26 as follows:

27 **633A.6101 Subject matter jurisdiction.**

28 1. The district court sitting in probate has exclusive  
29 jurisdiction of proceedings concerning the internal affairs  
30 of a trust and of actions and proceedings to determine  
31 the existence of a trust, actions and proceedings by or  
32 against creditors or debtors of a trust, and other actions  
33 and proceedings involving a trust and third persons. Such  
34 jurisdiction may be invoked by any interested party at any  
35 time.

1     2. Unless a trust is under continuous court supervision  
2 pursuant to section 633.10, subsection 4, the trust shall not  
3 be subject to the jurisdiction of the probate court and the  
4 court shall not issue letters of appointment.

5     Sec. 11. Section 633A.6301, subsection 4, Code 2009, is  
6 amended by striking the subsection and inserting in lieu  
7 thereof the following:

8     4. Section 633A.6301, subsection 4, Code 2009, applies to  
9 written consents executed prior to July 1, 2010.

10    Sec. 12. Section 633C.2, Code 2009, is amended to read as  
11 follows:

12    **633C.2 Disposition of medical assistance special needs**  
13 **trusts.**

14    Regardless of the terms of a medical assistance special  
15 needs trust, any income received or asset added to the trust  
16 during a one-month period shall be expended as provided for  
17 medical assistance income trusts under section 633C.3, on  
18 a monthly basis, during the life of the beneficiary. Any  
19 increase in income or principal retained in the trust from  
20 a previous month may be expended, during the life of the  
21 beneficiary, only for reasonable and necessary expenses of the  
22 trust, not to exceed ~~ten~~ fifty dollars per month without court  
23 approval, for special needs of the beneficiary attributable  
24 to the beneficiary's disability and approved by the district  
25 court, for medical care or services that would otherwise  
26 be covered by medical assistance under chapter 249A, or to  
27 reimburse the state for medical assistance paid on behalf of  
28 the beneficiary.

29    Sec. 13. Section 633C.3, subsection 1, paragraph a, Code  
30 2009, is amended to read as follows:

31    a. A reasonable amount may be paid or set aside each  
32 month for necessary expenses of the trust, not to exceed  
33 ~~ten~~ fifty dollars per month without court approval.

34    Sec. 14. Section 633C.3, subsection 2, paragraph a, Code  
35 2009, is amended to read as follows:



1 and of the appointment of the executor to the entity designated  
2 by the department of human services for purposes of medical  
3 assistance claims under Code section 249A.5. The bill also  
4 requires the department of human services to provide an  
5 electronic notice relating to whether the department will make  
6 a medical assistance claim against the decedent's estate within  
7 the requisite time period. The bill makes a conforming change  
8 to Code section 633.410 relating to the recovery of medical  
9 assistance payments by the department.

10 DISTRIBUTION OF PROPERTY BY AFFIDAVIT. The bill allows the  
11 distribution of property by affidavit when the gross value  
12 of the decedent's personal property that would otherwise be  
13 distributed by will or intestate succession does not exceed  
14 \$25,000.

15 DUTY TO INFORM AND ACCOUNT. The bill provides that the  
16 remedies for a trustee's alleged failure to inform and account  
17 are not available for trusts created prior to July 1, 2002.

18 TRUSTS — CERTIFICATIONS. The bill provides that, for  
19 purposes of transferring property to or from a trust a transfer  
20 agent may request a certification of the existence of the trust  
21 and the identity of the trustee. The bill further provides  
22 that if a trustee has provided a certification of trust and  
23 a person refuses to pay, deliver, or transfer any property  
24 owed to or owned by the trust within a reasonable time, the  
25 trustee may bring an action and the court may award the trustee  
26 damages, costs of the action, a civil penalty, and reasonable  
27 attorney fees.

28 TRUSTS — SUBJECT MATTER JURISDICTION. The bill provides  
29 that letters of appointment are not required for trusts not  
30 under continuous court supervision under Code section 633.10,  
31 subsection 4 (jurisdiction of the district court sitting in  
32 probate relating to trusts and trustees).

33 TRUSTS — REPRESENTATION. The bill makes a provision that  
34 provides that the consent of a person who may represent and  
35 bind another person under the trust code is binding on the

1 person represented unless the person represented objects to the  
2 representation before the consent would otherwise have become  
3 effective applicable only to written consents executed prior to  
4 July 1, 2010.

5       DISPOSITION OF MEDICAL ASSISTANCE SPECIAL NEEDS TRUSTS AND  
6 MEDICAL ASSISTANCE TRUSTS. The bill increases the reasonable  
7 amount that may be paid or set aside each month for necessary  
8 expenses of a medical assistance income trust, without court  
9 approval, from up to \$10 to up to \$50 for a beneficiary whose  
10 total monthly income is less than the average statewide charge  
11 for nursing facility services to a private-pay resident of a  
12 nursing facility.

13       The bill increases the reasonable amount that may be paid  
14 or set aside each month for necessary expenses of a medical  
15 assistance income trust, without court approval, from up to \$10  
16 to up to \$50 for a beneficiary whose total monthly income is  
17 at or above the average statewide charge for nursing facility  
18 services to a private-pay resident.

19       The bill provides that, in lieu of the statewide average  
20 charge for nursing facility services, the applicable rate for  
21 a beneficiary who meets the medical assistance level of care  
22 requirements for nursing facility services and who resides in  
23 a nursing facility that provides such services is the actual  
24 cost of a private-pay resident at the nursing facility where  
25 a beneficiary resides.